ities, that misconduct during a prior term renders an official as unfit to continue in office as would acts of similar character committed after reelection. *State* v. *Welch,* 109 Iowa 19, 79 N. W. 369; *State* v. *Bourgeois,* 45 La. Ann. 1350, 14 South. 28; *Territory* v. *Sanches,* 14 N. M. 493, 94 Pac. 954, 20 Ann. Cas. 109. But the majority of cases hold that the new election amounts to a condonation of his prior misconduct. *Thurston* v. *Clark,* 107 Cal. 285, 40 Pac. 435; *State* v. *Hasty* (Ala.), 63 South. 559, 50 L. R. A. (N. S.) 553; *In re King,* 53 Hun. 631, 25 N. Y. 792, 6 N. Y. Supp. 420; *State* v. *Watertown,* 9 Wis. 254. See *In re Advisory Opinion,* 64 Fla. 168, 60 South. 337. The same rule is held to apply to offenses committed during a prior term in somewhat similar offices. *State* v. *Patton,* 131 Mo. App. 628, 110 S. W. 636. See *Speed* v. *Detroit,* 98 Mich. 360, 57 N. W. 406, 39 Am. St. Rep. 555, 22 L. R. A. 842.

It would seem that the surrounding facts should govern each decision, in cases of this kind, and that no arbitrary rule can be applied. If the officer's conduct during a prior term was of such a nature as to show clearly that he is unfit to continue in office, the welfare of society demands that he be discharged. *Tibbs* v. *Atlanta,* 125 Ga. 18, 53 S. E. 811. But if the prior acts show nothing more than neglect of some formal duty, and involve no moral delinquency they should not constitute cause for removal. *State* v. *Watertown, supra.*

The same conflict is found on the question whether an officer, discharged for misconduct during a current term, is eligible for reelection to the same office for the remainder of that term; and it has been held, in at least one jurisdiction, that expulsion operates only to remove, and not as a disqualification *in futuro. State* v. *Jersey City,* 25 N. J. L. 536. But by the great weight of authority, it is held that the continuity of the term is not broken by the removal and that the officer removed is thereby disqualified as his own successor. *Day* v. *Sharp,* 128 Tenn. 340, 161 S. W. 994; *State* v. *Rose,* 74 Kan. 262, 86 Pac. 296, 6 L. R. A. (N. S.) 843, 10 Ann. Cas. 927; *State* v. *Dart,* 57 Minn. 261, 59 N. W. 190; *Carlisle* v. *Burke,* 82 Misc. 282, 144 N. Y. Supp. 163.

REAL PROPERTY—PRIOR LEASE OF LANDS—SUBSEQUENT LEASE OF MINING RIGHTS.—Certain lands were leased by the owner to another, for farming purposes. Subsequently, the owner leased the oil and gas rights in the same property. In operating under his lease, the oil-lessee necessarily occupied a portion of the surface of the land. The surface-lessee then sued out an injunction against the occupation of any portion of the surface by the oil-lessee. *Held,* the injunction is dissolved. *Kemmerer* v. *Midland Oil and Drilling Co.* (C. C. A.), 229 Fed. 872.

The legal understanding of a lease for years of land is, a contract for the possession and profits of the land for a determinate period, with the recompense of rent. *U. S.* v. *Gratiot,* 14 Pet. 526. Hence, the rights of the lessee during his term are the same as those of a purchaser in fee. *Waskey* v. *Chambers,* 224 U. S. 564, Ann. Cas. 1913D, 998. See MINOR, REAL PROPERTY, § 376. And, though not expressly stated, a covenant for the quiet enjoyment of the premises is, by implication, read into such a lease. *Lanigan* v. *Kille,* 97 Pa. St. 120, 39 Am. Rep. 797; *Duncklee* v. *Webber,* 151 Mass. 408, 24 N. E. 1082. The lessee may bring trespass

against the owner of the fee for unlawfully entering upon the property. *Barneycastle* v. *Walker,* 92 N. C. 198; *Marden* v. *Jordan,* 65 Me. 9. And a subsequent lessee has no better right to disturb the possession of the prior lessee than the lessor himself has. *Case* v. *Minot,* 158 Mass. 577, 33 N. E. 700, 22 L. R. A. 536; *Morgan* v. *Smith,* 5 Hun. (N. Y.) 220.

It is well settled that oil and natural gas are classed in law as minerals. *Lanyon Zinc Co.* v. *Freeman,* 68 Kan. 691, 75 Pac. 995, 1 Ann. Cas. 403; *Weaver* v. *Richards,* 156 Mich. 320, 120 N. W. 818; *People ex rel. Carrol* v. *Bell,* 237 Ill. 332, 86 N. E. 593, 15 Ann. Cas. 511, 19 L. R. A. (N. S.) 746. It is also held that the different strata underlying the same surface are capable of distinct ownership. See *Lillibridge* v. *Lackawanna Coal Co.,* 143 Pa. St. 293, 22 Atl. 1035, 24 Am. St. Rep. 544, 13 L. R. A. 627. Consequently, in a grant, or lease of mineral rights there is also passed by necessary implication a right to penetrate, and occupy that portion of the surface of the land necessary to gain access to the minerals. *Quando aliquid conceditur, conceditur etiam et id sine quo res ipso non esse putuit. Rowbotham* v. *Wilson,* 8 H. L. Cas. 348; *Turner* v. *Reynolds.* 23 Pa. St. 199; *Williams* v. *Gibson,* 84 Ala. 228, 4 South. 350. And where conflict arises in the exercise of their rights, between the owners of different strata, the owner of the lower strata has a right of access and egress through the upper. *Chartiers Block Coal Co.* v. *Mellon,* 152 Pa. St. 286, 25 Atl. 597, 34 Am. St. Rep. 645, 18 L. R. A. 702.

The instant case presents the situation of conflict between the rights of prior surface-lessee, and those of a later oil-lessee. The surface-lessee is entitled to the undisturbed and exclusive possession of the land; while the oil-lessee, in his turn, is entitled to the use of that portion of the surface necessary to carry on his mining operations. Viewing the situation strictly, it would seem that the lessor has attempted to do impliedly what he could not do expressly, namely: grant rights in the surface of the land, thus derogating from his grant to the surface-lessee. On the other hand, it can hardly be the policy of the law for an owner not to have access to his property.

A happy solution of this problem has been suggested by the promulgation of the doctrine that the several strata composing the earth's crust are, according to their order and arrangement, subject to reciprocal servitudes; that these servitudes are imposed by nature, and are indispensable to the proper enjoyment of each strata; and that they should, therefore, be recognized by the courts. See *Chartiers Block Coal Co.* v. *Mellon, supra.* This doctrine would seem to decide equitably a problem produced by modern mining conditions. It also has the support of text-writers. See LINDLEY, MINES, § 827.

STATUTE OF FRAUDS—PROMISE TO ANSWER FOR THE DEBT OF ANOTHER—ORIGINAL PROMISE.—The defendant made an oral promise to pay the debt which his brother owed the plaintiff, provided the latter would ship the defendant certain goods which he had ordered. The goods were shipped and received, but the defendant refused to fulfill his promise. *Held,* the defendant is liable. *Greenbaum* v. *Stern* (Wash.), 155 Pac. 751.

Where the primary object of a person who agrees to pay the debt of another is to gain some advantage, or promote some interest, or